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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,712	09/23/2003	Robert Rascon	4615	2215
29741	7590	07/28/2005	EXAMINER	
JOHNJ. LEAVITT PO BOX 6478 SAN JOSE, CA 95150-6478			SAFAVI, MICHAEL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/668,712

Applicant(s)

RASCON, ROBERT

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13, 18 and 21 is/are allowed.
- 6) ☒ Claim(s) 14-16, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Applicant's amendment of March 29, 2005 is not in compliance with the provisions of 37 CFR § 1.121.

37 CFR § 1.121

c)(4)(i) **No claim text shall be presented for any claim in the claim listing with the status of "canceled".**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent Application Publication 2003/0101670 A1 to Gustin.**

Gustin discloses, Figs. 1A and 4-6, a force retention plate 17 or top thereof comprising a generally flat elongated plate, (top thereof), having at bifurcated portions at each opposite end in the form of a pair of perpendicularly extending laterally spaced anchor members, (sides of 17 at each end), which can be detachably engaged to a stake 40 abutting associated form members. The anchor members are integrally connected to

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the generally flat elongated plate. Plate 17 can be seen extending transversely above laterally spaced form members 50.

**Claims 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Peden.** Peden discloses Figs. 1 and 2, a force retention plate comprising a generally flat elongated plate 12 having at each opposite end a pair of perpendicularly extending laterally spaced anchor members 18 which constitute bifurcated ends of the plate 12 and which can be detachably engaged to a stake abutting associated form members. The anchor members 18 are integrally connected to the generally flat elongated plate 12. The anchor members are integrally connected to said generally flat elongated plate by integral reentrant portions, (see Fig. 2 as along reentrant curve leading to side of plate 12 or, for that matter, sidewall to which 18 is integral is reentrant to horizontal surface of plate 12), that provide arcuate recesses detachably engageable to stabilize the position of said generally flat elongated plate. Laterally spaced pair of elongated stakes 14 have a multiplicity of through-bores extending diametrically therethrough at spaced intervals. Nails 22 extend through corresponding through-bores of the spaced pair of stakes to provide projecting end portions on opposite sides of the stakes with retention plate 12 extending transversely between a pair of laterally spaced elongated stakes 14 and detachably engaging the projecting end portions of the nails, (each 18 engages portion of 22 on respective opposite sides of the stake), on opposite sides of the stakes to restrain the stakes against a force tending to separate them. The plate 12 extends transversely above said laterally spaced form members B. As for claim 19,

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“bifurcated ends” of the Peden plate 12 are at 18-18 or at the respective portions inside of 18 and extending down from the horizontal surface of plate 12. Such bifurcated end also abuts the associated stake 14 as along 20, for example.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peden in view of either of Davis '737 and Colatruglio '247.**

Arguments to Peden can be found above. Davis '737 teaches, as in Fig. 1, utilization of vertically placed support stakes 3 as well as angularly placed support stakes 5 for holding form boards 1 in position. Colatruglio '247 teaches, Figs. 1 and 3, utilization of vertically placed support stakes 24 with a “triangle form brace” for holding form boards 11 in position. Though Peden apparently desires a triangle brace to hold the Peden forms B in place, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized the Peden form system with the stakes in a vertical position, (i.e., form system employing “generally parallel” stakes), thus allowing use of the Peden form system to establish curbing or footings in any of a variety of construction environments and settings as well as provide affirm support

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along the vertical face of the form boards, as is taught by either of Davis '737 and Colatruglio '247.

Claims 1-13, 18, and 21 are allowed.

### ***Response to Arguments***

Applicant's arguments filed March 29, 2005 have been fully considered but they are not persuasive. As presented within the above rejection involving Peden the plate 12 of Peden does about the respective stake 14.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354**

M. Safavi  
June 20, 2005